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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

ASSESSMENT APPEALS SERVICES, LLC, Plaintiff, Appellant and Cross-respondent, v. COROLLA CENTERS, INC., et al., Defendants, Respondents and Cross-appellants.	B169461 (Los Angeles County Super. Ct. No. BC277279)

APPEAL from an order of the Superior Court of Los Angeles County, Rodney E. Nelson, Judge. Affirmed.

McAllister & Glover, Jon-Rene M. Glover for plaintiff, appellant and cross-respondent.

Hamburg, Karic, Edwards & Martin LLP, Gregg A. Martin and Arezou Kohan for defendants, respondents and cross-appellants.

INTRODUCTION

Appellant Assessment Appeals Services, LLC (plaintiff or AAS) filed an action against Corolla Centers, Inc. (Corolla) and Paul Lorda (Lorda) (collectively defendants) for monies owing arising out of contracts under which plaintiff was to be compensated for assisting defendants in seeking reductions of real estate taxes. The trial court held that the contracts were unenforceable on the grounds that they were ambiguous, the plaintiff breached a fiduciary duty to defendants by failing to notify them of changes in the contracts, the changes in the contract were designed to produce the highest available fee, there was doubt as to whether defendants executed the contracts, and the contracts contained an invalid liquidated damages clause. The trial court also held that Lorda was not a party to the contracts, that plaintiff was entitled to quantum meruit damages in the amount of $7,000, and that defendants were entitled to attorney fees in the amount of $27,000, instead of the $39,348.50 defendants requested. We affirm the judgment.

STATEMENT OF FACTS AND PROCEEDINGS[1]

Notwithstanding that plaintiff did not provide an adequate record as required, we have reviewed the Superior Court file and exhibits. Also, although plaintiff violated California Rules of Court, rule 14(a)(1)(C) by not citing to the record in its opening brief, and we are entitled to ignore that brief (*Colt v. Freedom Communications, Inc.* (2003) 109 Cal.App.4th 1551, 1560-1561), we have reached the merits.

AAS is in the business of assisting property owners to seek reductions of their county real estate taxes and has done such work for Corolla pursuant to annual contracts since the early 1990's. Those contracts, which appear to be standard form contracts,

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[1] "[I]n summarizing the facts on appeal we 'must consider the evidence in the light *most favorable to the prevailing party,* giving him the benefit of *every reasonable inference,* and *resolving conflicts* in support of the judgment.' [Citation.]" (*Whiteley v. Philip Morris Inc.* (2004) 117 Cal.App.4th 635, 642, fn. 3.)

provided that Corolla would "pay AAS a fee equal to 50% of the . . . property tax savings." For the year 2000-2001, AAS changed its form contract to add the following sentence: "The fee paid to AAS shall be based on the difference between the assessed trended base year value and any reduction in assessment." Plaintiff did not alert Corolla to this addition, and defendants denied having any knowledge of it. Despite this change, AAS did not actually use this method for determining its fee for the 2000-2001 tax year. AAS continued to calculate its fee based on any reduction in the tax.

In 2000, AAS sent to Corolla three contracts for the tax year 2001-2002, each covering a separate parcel of land. The contracts referred to Corolla and Lorda as the "Client." The contracts each contained the following clause (except for the numbers for the "trended Prop. 13 value"): "3. Client shall also pay AAS a fee equal to 50% of the 2001-2002 property tax savings. This fee shall be payable within 10 calendar days upon written receipt from the tax assessor/appeals board of the lowered assessment (action taken/confirmation card/stipulation/notice of the assessed value). In the event AAS determines the outcome of the initial application to be unfavorable, AAS at its sole and absolute discretion may file for an appeals hearing with the Assessment Appeals Board. Notwithstanding anything to the contrary, Client shall pay AAS its fee upon any reassessment and/or reduction of taxes. Fee shall be based on one full year's savings. Client shall not withdraw or modify this appeal without prior written consent of AAS. Should withdrawal be made without such consent, AAS shall receive a fee based upon their opinion of value. Fee to AAS shall be based on the difference of [$2,918,123] (trended Prop. 13 value) and the 2001-2002 assessed value. An appeal may not be necessary and the reduction in assessment may occur by the Assessor enrolling the same value as per the 2001-2002 correction/reduction/reassessment. Nonetheless, client shall pay AAS a fee equal to 50% of the difference of any assessment below a value of [$2,918,123]."

Again, the changes in the provision were not called to defendants' attention, and Lorda denied that he was aware of them. The signature purporting to be Lorda's appears

on each of the contracts with the words "as agent" after his name. Lorda was the President of Corolla, not a shareholder, and he said he only acted as an agent for Corolla, not as a principal.

In 2001, the contracts covering the three parcels again appear executed by Lorda for the tax year 2002-2003. They contained the following clauses: "3. Client shall pay AAS a fee equal to 50% of the 2002-2003 property tax savings. This fee shall be payable within 10 calendar days upon written receipt from the tax assessor/appeals board of the lowered assessment (action taken/confirmation card/stipulation/notice of the assessed value change/adjusted tax bill). In the event AAS determines the outcome of the initial application to be unfavorable, AAS at its sole and absolute discretion may file for an appeals hearing with the Assessment Appeals Board. Notwithstanding anything to the contrary, Client shall pay AAS its fee upon any reassessment and/or reduction of taxes. Fee shall be based on one full year's savings, even if the property is sold and/or a transfer of ownership occurs. Client shall not withdraw, cancel and/or modify this appeal/Agreement without the sole prior written consent of AAS. Should withdrawal, cancellation and/or modification be made without such consent, AAS shall receive a fee based upon their opinion of value regardless of the actual tax savings. Any participation/assistance by Client in obtaining any reduction of assessment shall still resulting in AAS obtaining its full fee. Fee to AAS shall be based on the difference of [$2,849,254] (trended Prop. 13 value) and the 2002-2003 assessed value. An appeal may not be necessary and the reduction in assessment may occur by the Assessor enrolling, carrying forward and/or rolling over the same value as per the 2001-2002 correction/reduction/assessment. Nonetheless, client shall pay AAS a fee equal to 50% of the difference of the tax savings of any assessment below a value of [$2,849,254]. [¶] 4. Client understands Proposition 8 reductions are temporary and reviewable annually. Savings for prior and/or future tax years are exclusive of the 2002-2003 fiscal year. The fee paid to AAS shall be based upon the 2002-2003 tax savings." These contracts did not include the words "as agent" after Lorda's signature.

Lorda testified that he was out of the country from late 1997 to sometime in 2000 recuperating from a liver transplant and did not recognize his purported signature on five of the six the contracts at issue or recall signing them. He also said that no one else in his office was authorized to sign tax documents for Corolla.

Plaintiff sent defendants invoices for the year 2001-2002 contracts. The invoices were substantially higher than previous invoices, even though the taxes for the three properties were approximately the same as the year before. These invoices were sent after the date the 2002-2003 contracts were signed.

Defendants refused to pay the invoices based upon the 2001-2002 contracts and, in effect, canceled the 2002-2003 contracts. AAS subsequently invoiced defendants for the 2002-2003 tax years based upon the cancellation clauses in the contracts that allowed AAS to receive a fee if there were such a cancellation without AAS's consent. That fee was based on a computation that included what AAS's opinion of what the assessed value should be. Defendants did not pay those invoices either.

Plaintiff filed an action. After a court trial, the trial court concluded that the contracts were unenforceable because of ambiguity; the failure of plaintiff, a fiduciary of Corolla, to call the changes to defendants' attention; the new formula produced the highest available fee; the contract contained an invalid liquidated damages clause; and the contracts do not bear the signature of Lorda. The trial court found that Lorda was not liable as a principle or as a shareholder under an alter ego theory because Lorda was not a shareholder and was only the manager of AAS. The court awarded plaintiff $7,000 in quantum meruit damages and awarded defendants $27,000 in attorney fees.

Plaintiff appeals from the judgment, including from the award of attorney fees. Defendants cross-appealed from the judgment as to the award for quantum meruit and as to the amount of attorney fees.[2]

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[2] Defendants arguments regarding quantum meruit are in their Respondents Brief, rather than in their Opening Brief.

DISCUSSION

1. *Enforceability of Contracts*

The issue of whether a contract is sufficiently certain to be enforceable is a question of law, which we review de novo. (*Elite Show Services, Inc. v. Staffpro, Inc.* (2004) 119 Cal.App.4th 263, 268.) "[A] promise must be definite enough that a court can determine the scope of the duty and the limits of performance must be sufficiently defined to provide a rational basis for the assessment of damages." (*Ladas v. California State Auto. Assn.* (1993) 19 Cal.App.4th 761, 770; see *Weddington Productions, Inc. v. Flick* (1998) 60 Cal.App.4th 793, 812.) The California Supreme Court noted that "[w]here a contract is so uncertain and indefinite that the intention of the parties in material particulars cannot be ascertained, the contract is void and unenforceable." (*California Lettuce Growers v. Union Sugar Co.* (1955) 45 Cal.2d 474, 481.) But, it added, "[h]owever, 'The law does not favor but leans against, the destruction of contracts because of uncertainty; and it will, if feasible, so construe agreements as to carry into effect the reasonable intentions of the parties if that can be ascertained.'" (*Ibid*.)

The trial court correctly held that the contracts in issue are too ambiguous to enforce. The clauses in those contracts all provide that AAS's fee shall be "50% of the . . . property tax savings." But the clauses also say that the fee "shall be based on the difference of" a specified number labeled as the "trended Prop[osition] 13 value" and the "assessed value." This latter computation is not related to a tax savings and is therefore inconsistent with the fee provision based on a tax savings.

There is no parol evidence showing that both parties intended that the fee be based upon anything other than a reduction in taxes. There is no feasible way to construe the contracts so as to carry out the mutual intentions of the parties. Because of the inconsistency, a court cannot "determine the scope of the duty and the limits of performance [that is] sufficiently defined to provide a rational basis for the assessment of damages." (*Ladas v. California State Auto. Assn., supra,* 19 Cal.App.4th at p. 770.)

Accordingly, the contracts are too indefinite to enforce. In view of our holding, we do not need to reach the other grounds given by the trial court as to why the contracts are not enforceable.[3]

2. *Quantum Meruit*

Having correctly determined that the contracts were too indefinite to enforce, the trial court awarded plaintiff monies for services rendered—i.e. for quantum meruit. Defendants assert that this was an error, and plaintiff argues that the amount awarded should have been based on its interpretation of the contracts. We do not agree with either of these positions. A party may recover in quantum meruit when an express contract is not enforced due to uncertainty. (*Brown v. Crown Gold Milling Co.* (1907) 150 Cal. 376, 384; *Blank v. Rodgers* (1927) 82 Cal.App. 35, 46; 1 Witkin, Summary of Calif. Law, *supra,* Contracts, § 118, p. 143.) Thus, a quantum meruit recovery is not foreclosed, as in this case. Defendants claim that there should be no recovery if there was no tax savings. But, they have argued, and we agree, that there is no valid contract. Thus, we cannot accord the alleged contingency any significance.

A party who performs services at the request of another under the reasonable belief that it will be compensated for such services may recover in quantum meruit, even though the services do not directly benefit the requesting party. (*Earhart v. William Low Co.* (1979) 25 Cal.3d 503, 505-506; 1 Witkin, Summary of Calif. Law, *supra,* Contracts, § 96, p. 126.) Thus, the lack of any evidence that plaintiff saved Corolla taxes does not preclude a quantum meruit recovery.

Substantial evidence supports the trial court's decision that plaintiff is entitled to a quantum meruit recovery. (See *Watson v. Wood Dimension, Inc.* (1989) 209 Cal.App.3d 1359, 1365-1366 [substantial evidence standard of review for quantum meruit]; *Koontz v.*

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[3] See 1 Witkin, Summary of California Law (9th ed. 1987) Contracts, § 24, p. 54 [duty to note changes in standardized contracts].

Fee (1949) 90 Cal.App.2d 416, 417 [substantial evidence standard of review for quantum meruit].) By executing the contract, defendants expected plaintiff to perform services. There is substantial evidence that it performed such services. There is evidence that it communicated with the Assessment Appeals Board and the assessor; conducted market analyses; filed applications with the assessor; and attended hearings.

Defendants argue that plaintiff failed to introduce evidence of the value of its services. The absence of evidence of the value of the services does not preclude such a recovery. (*Punton v. Sapp Bros. Construction Co.* (1956) 143 Cal.App.2d 696, 701-702.) Here there was substantial evidence that plaintiff performed some services, and such evidence includes the "nature and duration of the services." (See *Collier v. Landram* (1945) 67 Cal.App.2d 752, 759.) From that evidence, the trial court may award the reasonable value of the services performed, and that determination "will not be disturbed on appeal on the ground that it is either excessive or inadequate, except for a clear abuse of discretion." (*Collier v. Landram, supra,* at p. 759) There was no such abuse of discretion in this case. As noted, there is evidence showing that plaintiff did perform services.

Plaintiff is incorrect in arguing that the value of the services must be the amount provided by the contracts. The contracts are unenforceable because of the ambiguity of how to determine the compensation. Thus, the trial court could not use an express term from the contracts to determine the value of the services.

3. *Agent Not Responsible*

There was substantial evidence to support the trial court's conclusion that Lorda could not be held responsible for any obligation to plaintiff. (*Seneca Insurance Co. v. County of Orange* (2004) 117 Cal.App.4th 611, 618 [whether an agent acted on behalf of a principal is a question of fact reviewed on appeal for substantial evidence].) To the extent he acted at all, it was as an agent of Corolla. None of the services was performed for him. Lorda was not a shareholder of Corolla, and no evidence was presented on which he could be held responsible under any alter ego theory. (See *Communist Party v. 522 Valencia, Inc.* (1995) 35 Cal.App.4th 980, 992.)

4. *Attorney Fees*

Civil Code section 1717 entitles the prevailing party to attorney fees in an action on a contract providing for attorney fees, even when the party prevails on the ground that the contract is unenforceable, if the other party would have been entitled to attorney fees had it prevailed. (*Hsu v. Abbara* (1995) 9 Cal.4th 863, 870.) The determination as to who is the prevailing party under Civil Code section 1717, which provides that the prevailing party is the party recovering the greater relief in the action on the contract, is within the discretion of the trial court. (*Jackson v. Homeowners Assn. Monte Vista Estates-East* (2001) 93 Cal.App.4th 773, 789.) Here there was no abuse of discretion. Plaintiff recovered nothing under the contracts.

Defendants challenge the amount of the attorney fees award. The trial court's determination of the amount of attorney fees cannot be disturbed on appeal unless the trial court abused its discretion. (*PLCM Group, Inc. v. Drexler* (2000) 22 Cal.4th 1084, 1094-1095.) There is no showing that the trial court's award, that was $12,000 less than defendants requested, was an abuse of discretion.

DISPOSITION

The judgment is affirmed. Each party shall bear its or his own costs on appeal.

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MOSK, J.

We concur:

TURNER, P.J.

KRIEGLER, J.*

* Judge of the Superior Court of Los Angeles County, assigned by the Chief Justice pursuant to article VI, section 6, of the California Constitution.